

# Court of Appeals, State of Michigan

## ORDER

Emad Eillya v Farm Bureau Ins Co

Docket No. 257674

LC No. 04-402637-CK

Kirsten Frank Kelly  
Presiding Judge

Kurtis T. Wilder

Christopher M. Murray  
Judges

The Court orders, pursuant to MCR 7.205(D)(2), that the trial court's May 28, 2004 order is VACATED to the extent it compelled defendant to produce 1099s pertaining to Dr. Steven Arbit's expert testimony or opinions. Further, the trial court's July 16, 2004 order is VACATED to the extent Dr. Arbit was stricken from defendant's witness list and precluded from testifying in this matter. A pattern of testifying as an expert witness for a particular category of plaintiffs or defendants may suggest bias. However, such testimony is only minimally probative of bias and should be carefully scrutinized by the trial court. *Wilson v Stilwell*, 411 Mich 587, 601; 309 NW2d 898 (1981). In this case, other information requested by plaintiff's interrogatories, as well as information which can be obtained from deposing Dr. Arbit, will provide plaintiff with sufficient information to support any bias argument. In light of the "minimally probative" nature of such a bias argument, and the availability of other information to support such an argument, it was an abuse of discretion for the trial court to compel defendant to produce the 1099s. See MRE 611(a)(3) (stating that the trial court has a duty to protect witnesses from harassment or undue embarrassment). Because the July 16, 2004 contempt order was based, at least in part, on defendant's failure to produce the 1099s, that order is also vacated.

This matter is REMANDED to the trial court for further proceedings consistent with this order. The trial court shall, among other things, reconsider plaintiff's contempt motion, and an appropriate sanction, if any, in light of the fact that defendant can not be held in contempt for failing to produce the 1099s. See *Colovos v Dep't of Transportation*, 205 Mich App 524, 528; 517 NW2d 803 (1994) (discussing factors to be considered before imposing a sanction such as barring a witness).

We do not retain jurisdiction.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

FEB 16 2005

Date

*Sandra Schultz Mengel*  
Chief Clerk